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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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12 GERALD L. ROGERS,) CV 14-04042-RSWL
13) CR 82-292 RSWL
14 Petitioner,) **ORDER DEFENDANT'S MOTION**
15 v.) **FOR RECONSIDERATION [11]**
16) CR[478]
17 UNITED STATES OF AMERICA,)
18 Respondent.)

19 Currently before the Court is Petitioner Gerald L.
20 Rogers' ("Petitioner") Motion for Reconsideration. For
21 the following reasons, the Court **DENIES** Petitioner's
22 Motion.

23 **I. Background**

24 Petitioner was convicted of and sentenced for eight
25 counts of mail fraud (18 U.S.C. § 1341) and twenty-one
26 counts of aiding and assisting the preparation of false
27 income tax returns (26 U.S.C. § 7206(2)). Petitioner
28 was sentenced on March 26, 1990 to serve 10 years in

1 prison.

2 After this sentence, Petitioner was convicted of
3 multiple counts of mail fraud and securities violations
4 in the District of Colorado. In October 1990,
5 Petitioner was sentenced in the District of Colorado to
6 25 years in prison, to run consecutively with the 10
7 year sentence in this case. This sentence was affirmed
8 on appeal. United States v. Rogers, 960 F.2d 1501
9 (10th Cir. 1992).

10 The Ninth Circuit affirmed Petitioner's conviction
11 in this case, but remanded for re-sentencing. United
12 States v. Rogers, 8 F.3d 33 (9th Cir. 1993). On July
13 11, 1994, Petitioner was re-sentenced to the same term
14 of 10 years in prison.

15 Since Petitioner's conviction, Petitioner has filed
16 multiple post-conviction pleadings and motions. He has
17 filed at least four motions under 28 U.S.C. § 2255: (1)
18 filed on December 17, 1993 and denied on June 20, 1994;
19 (2) filed November 3, 1994 and denied on January 25,
20 1995; (3) filed on July 18, 2006 and denied on October
21 3, 2006; and (4) filed on March 17, 2008 and denied on
22 June 12, 2008. Petitioner filed a Motion Pursuant to
23 U.S. v. Tanke to Dismiss Lulling Letter Counts and Set
24 Aside Sentence on June 27, 2014. On August 1, 2014,
25 the Court issued an Order denying Petitioner's June 27,
26 2014 Motion Pursuant to U.S. v. Tanke to Dismiss
27 Lulling Letter Counts and Set Aside Sentence, holding
28 that Petitioner essentially filed another 28 U.S.C. §

1 2255 motion. See Dkt. # 9. Because Defendant had
2 previously filed a § 2255 habeas petition, to succeed
3 on his Motion, Petitioner was required to comply with §
4 2255(h)'s strict requirements before filing a
5 successive motion. See id. at 6:7-10. Because
6 Petitioner did not comply with those requirements, his
7 Motion was denied. Id. 7:4-7.

8 **II. Discussion**

9 **A. Legal Standard**

10 Motion for Reconsideration

11 Petitioner brings a Motion for Reconsideration.
12 Federal Rule of Civil Procedure 59(e) permits a court
13 to alter or amend a previously entered order. Carroll
14 v. Nakatani, 342 F.3d 934, 945 (9th Cir. 2003).
15 Generally, "a motion for reconsideration should not be
16 granted, absent highly unusual circumstances, unless
17 the district court is presented with newly discovered
18 evidence, committed clear error, or if there is an
19 intervening change in the controlling law.'" Kona
20 Enters., Inc. v. Estate of Bishop, 229 F.3d 877, 890
21 (9th Cir. 2000) (quoting 389 Orange St. Partners v.
22 Arnold, 179 F.3d 656, 665 (9th Cir. 1999)); Sch. Dist.
23 No. 1J, Multnomah Cnty., Oregon v. AcandS, Inc., 5 F.3d
24 1255, 1263 (9th Cir. 1993). "A Rule 59(e) motion may
25 not be used to raise arguments or present evidence for
26 the first time when they could reasonably have been
27 raised earlier in the litigation." Carroll, 342 F.3d
28 at 945 (citing Kona Enters., 229 F.3d at 890).

1 In the Central District of California, a party may
2 only make a motion for reconsideration on three
3 grounds:

4 (a) a material difference in fact or law from that
5 presented to the Court before such decision that in
6 the exercise of reasonable diligence could not have
7 been known to the party moving for reconsideration
8 at the time of such decision, or (b) the emergence
9 of new material facts or a change of law occurring
10 after the time of such decision, or (c) a manifest
11 showing of a failure to consider material facts
12 presented to the Court before such decision. No
13 motion for reconsideration shall in any matter
14 repeat any oral or written argument made in support
15 of or in opposition to the original motion.

16 C.D. Cal. L.R. 7-18. Furthermore, a Motion for
17 Reconsideration may not "in any manner repeat any oral
18 or written argument made in support of or in opposition
19 to the original motion." C.D. Cal. L.R. 7-18.

20 "Whether or not to grant reconsideration is committed
21 to the sound discretion of the court." Navajo Nation
22 v. Confederated Tribes & Bands of the Yakama Indian
23 Nation, 331 F.3d 1041, 1046 (9th Cir. 2003) (citing
24 Kona Enters., 229 F.3d at 883).

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27 **B. Analysis**

28 *Motion for Reconsideration*

1 In his Motion, Petitioner asks the Court to
2 reconsider its August 1, 2014 Order denying
3 Petitioner's Motion Pursuant to U.S. v. Tanke to
4 Dismiss Lulling Letter Counts and Set Aside Sentence.
5 Under Rule 59(e), it is appropriate to alter or amend a
6 judgment if "(1) the district court is presented with
7 newly discovered evidence, (2) the district court
8 committed clear error or made an initial decision that
9 was manifestly unjust, or (3) there is an intervening
10 change in controlling law." Zimmerman v. City of
11 Oakland, 255 F.3d 734, 740 (9th Cir. 2001) (citing Sch.
12 Dist. No. 1J, Multnomah Cnty v. ACandS, Inc., 5 F.3d
13 1255, 1263 (9th Cir. 1993)). In the present case,
14 Petitioner has not presented the Court with newly
15 discovered evidence. Petitioner merely repeats the
16 facts and evidence presented in his previous Motion and
17 concludes that the Court erred in the legal analysis of
18 the case. Factually, there is nothing new. As in his
19 previous Motion, Petitioner contends that his
20 incarceration was unlawful and that his constitutional
21 rights were violated. Mot. at 9. However, Petitioner
22 does not give any new evidence as to why that is his
23 position.

24 Petitioner also claims the analysis and case law
25 utilized by the Court were in plain error and thus, its
26 ruling should be reconsidered. Id. at 1. While
27 Petitioner cites to many cases which he believes help
28 his claim, Petitioner incorrectly asserts that the

1 Court erred in its reliance on the cases it cited when
2 denying Petitioner's Motion. Id. at 2.

3 Petitioner alleges that Williams v. Bagley, 380
4 F.3d 932 (6th Cir. 2004) held that the AEDPA is not
5 retroactive for crimes committed before its enactment
6 and that federal prisoners are in some way treated
7 differently than state prisoners. Mot. at 1. This is
8 false. Williams actually held that the AEDPA
9 requirement would apply retroactively because it did
10 not have a negative 'retroactive effect' on the
11 defendant, such as impairing rights, increasing
12 liability, or imposing new duties. Williams, 380 F.3d
13 at 943. Petitioner also falsely alleges that the
14 District Court of Hawaii in U.S. v. Kortgaard, 26 F.
15 Supp. 2d 1239 (D. Haw. 1997), misinterpreted a Supreme
16 Court ruling. Mot. at 3. Kortgaard also nullifies
17 Petitioner's argument that the AEDPA requirement
18 violates the Ex Post Facto Clause of the U.S.
19 Constitution, as the court clearly held it does not.
20 Kortgaard, 26 F. Supp. 2d at 1240-1241.

21 Petitioner argues that the Court lacks original
22 subject matter jurisdiction to hear the case because
23 the indictment by a federal grand jury was invalid.
24 Reply at 7. Petitioner alleges that AUSA Lourdes
25 Baird's paralegal signed the indictment as part of a
26 conspiracy, that accordingly, the indictment is
27 facially invalid, and that and as a result, Petitioner
28 was wrongly kidnapped and arrested. Id. As seen from

1 the Exhibit provided by Petitioner, the indictment
2 bears a signature over the line "Foreperson" and next
3 to that is written in "Assistant." While it is not
4 clear who wrote "Assistant," this does not make the
5 indictment facially invalid. Federal Rules of Criminal
6 Procedure 6(c) states the job of the Foreperson and
7 Deputy Foreperson includes signing indictments. Fed.
8 R. Crim. Pro. 6(c). While Petitioner makes an
9 allegation that the signature is from a paralegal, not
10 a part of the grand jury, a lack of a signature from a
11 Foreperson or Deputy Foreperson would not make an
12 indictment invalid. Hobby v. U.S., 468 U.S. 339, 345
13 (1984). The "foreman's duty to sign the indictment is
14 a formality, for the absence of the foreman's signature
15 is a mere technical irregularity that is not
16 necessarily fatal to the indictment." Id. Petitioner
17 has not provided sufficient evidence to prove the
18 signature on the indictment is that of a paralegal and
19 not an authorized member of the grand jury and there is
20 no other indication that the indictment is not
21 otherwise reliable and valid. Additionally, even if
22 the indictment had no signature, it would still be
23 valid. Petitioner also states, though not clearly,
24 that he brought a motion about the alleged "bogus
25 indictment" previously, but that because of the alleged
26 conspiracy against him, the docket sheet was altered
27 and his motion was never adjudicated. Reply at 8.
28 Ultimately, Petitioner has made claims with no

1 substance or basis and as such there is no indication
2 that the court lacked original subject matter
3 jurisdiction because of a "bogus indictment." Id.

4 Petitioner has failed to show that he satisfies any
5 of the requirements for granting reconsideration of the
6 denial of his Motion. This Court has not been
7 presented with newly discovered evidence, nor has
8 Petitioner shown the Court committed clear error.

9 While Petitioner believes he has shown material facts
10 which have not been considered, Petitioner fails to
11 realize these "facts" have no basis and are merely
12 accusations made by Petitioner in an attempt to
13 circumvent the correct legal analysis utilized in his
14 case. As the granting of reconsideration is in the
15 sound discretion of the court, there is no indication
16 it would be an abuse of discretion to deny such
17 reconsideration. Petitioner has failed to show any good
18 reason to grant reconsideration of the denial of his
19 Motion; accordingly, the Court **DENIES** Petitioner's
20 Motion for Reconsideration.

21 **IT IS SO ORDERED.**

22
23 DATED: December 19, 2014

RONALD S.W. LEW

HONORABLE RONALD S.W. LEW
Senior U.S. District Judge